

Environmental Protection Agency

§ 750.40

Branch employees may also sit with and assist the panel. The membership of the panel may change as different topics arise during the hearing. In general, the panel membership will consist of EPA employees with special responsibility for the final rule or special expertise in the topics under discussion. One member of the panel will be named to chair the proceedings and will attend throughout the hearing, unless unavoidably prevented by sickness or similar personal circumstances.

(b) The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination by others will normally not be permitted at this stage. It may be granted in compelling circumstances at the sole discretion of the hearing panel. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions.

(c) Participants in the hearing may submit additional material for the hearing record and shall submit such additional material as the hearing panel may request. All such submissions will become part of the record of the hearing. A verbatim transcript of the hearing shall be made. Participants will be allowed to designate testimony from prior EPA informal rulemaking hearings concerning PCBs under TSCA. The hearing panel may reject repetitive testimony previously presented at such hearings.

§ 750.40 Cross-examination.

(a) After the close of the informal hearing conducted under § 750.39, any participant in that hearing may submit a written request for cross-examination. The request must be received by EPA within one week after a full transcript of the informal hearing becomes available and must specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This must include an explanation of why the questions at issue are "factual", rather than of an analytical or policy nature, the extent to which they are in "dispute" in the light of the record made thus far, and the extent to which and why they can

reasonably be considered "material" to the decision on the final rule; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This must include a statement as to how the cross-examination requested can be expected to result in "full and true disclosure" resolving the issue of material fact involved.

(b) Within one week after receipt of all requests for cross-examination under paragraph (a), the hearing panel will rule on them. The ruling will be served by the Hearing Clerk on all participants who have requested cross-examination and will be inserted in the record. Written notice of the ruling will be given to all persons requesting cross-examination and all persons to be cross-examined. The ruling will specify:

(1) The issues as to which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons to be allowed to conduct cross-examination; and

(4) Time limits for the examination of each witness by each cross-examiner.

(c) In issuing this ruling, the panel may determine that one or more participants who have requested cross-examination have the same or similar interests and should be required to choose a single representative for purposes of cross-examination by that single representative without identifying the representative further. Subpoenas for witnesses may be issued where necessary.

(d) Within one week after the insertion into the record of the ruling under paragraph (b) of this section, the hearing at which the cross-examination will be conducted will begin. One or more members of the original panel will preside for EPA. The panel will have authority to conduct cross-examination on behalf of any participant, although as a general rule this right will not be exercised. The panel will also have authority to modify the governing ruling in any respect and to make new rulings on group representation under section 6(c)(3)(C) of TSCA. A verbatim transcript of the hearing will be made.

§ 750.41

(e)(1) No later than the time set for requesting cross-examination, a hearing participant may request that other alternative methods of clarifying the record (such as informal conferences or the submittal of additional information) be used. Such requests may be submitted either in lieu of cross-examination requests, or in conjunction with them.

(2) The panel in passing on a cross-examination request may, as a precondition to ruling on its merits, require that alternative means of clarifying the record be used whether or not that has been requested under paragraph (e)(1) of this section. In such a case, the results of the use of such alternative means will be made available to the person requesting cross-examination for a one-week comment period, and the panel will make a final ruling on cross-examination within one week thereafter.

(f) Waivers or extensions of any deadline in this section applicable to persons other than EPA may be granted on the record of the hearing by the person chairing it or in writing by the Hearing Chairman.

§ 750.41 Final rule.

(a) As soon as feasible after the deadline for submittal of reply comments, EPA will issue a final rule. EPA will also publish at that time:

(1) A list of all material added to the record (other than public comments and material from the hearing record) which has not previously been listed in a FEDERAL REGISTER document, and

(2) The effective date of the rule.

(b) Pursuant to the delegation of authority made in the Preamble to the Final Regulation for the PCB Manufacturing, Processing, Distribution in Commerce and Use Prohibitions, the Assistant Administrator for Prevention, Pesticides and Toxic Substances will grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to § 750.31. The Assistant Administrator will act on such petitions subsequent to opportunity for an informal hearing pursuant to this rule.

(c) In determining whether to grant an exemption to the PCB ban, EPA will apply the two standards enunciated in section 6(e)(3)(B) of TSCA.

40 CFR Ch. I (7–1–07 Edition)

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

Subpart A—General

Sec.

761.1 Applicability.

761.2 PCB concentration assumptions for use.

761.3 Definitions.

761.19 References.

Subpart B—Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items

761.20 Prohibitions and exceptions.

761.30 Authorizations.

761.35 Storage for reuse.

Subpart C—Marking of PCBs and PCB Items

761.40 Marking requirements.

761.45 Marking formats.

Subpart D—Storage and Disposal

761.50 Applicability.

761.60 Disposal requirements.

761.61 PCB remediation waste.

761.62 Disposal of PCB bulk product waste.

761.63 PCB household waste storage and disposal.

761.64 Disposal of wastes generated as a result of research and development activities authorized under § 761.30(j) and chemical analysis of PCBs.

761.65 Storage for disposal.

761.70 Incineration.

761.71 High efficiency boilers.

761.72 Scrap metal recovery ovens and smelters.

761.75 Chemical waste landfills.

761.77 Coordinated approval.

761.79 Decontamination standards and procedures.

Subpart E—Exemptions

761.80 Manufacturing, processing and distribution in commerce exemptions.

Subpart F—Transboundary Shipments of PCBs for Disposal

761.91 Applicability.

761.93 Import for disposal.

761.97 Export for disposal.

761.99 Other transboundary shipments.

Subpart G—PCB Spill Cleanup Policy

761.120 Scope.